

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ARDEN HILLS

In the Matter of the Dangerous Dog
Declaration for a Giant Black Male
Schnauzer (Cody)

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above matter came on for hearing before Administrative Law Judge Linda F. Close on August 10, 2010. The hearing record closed at the conclusion of the hearing the same day.

Jerome P. Filla, Arden Hills City Attorney, appeared on behalf of the City of Arden Hills (the City). Michael F. Wurst, owner of the dog named Cody, appeared on his own behalf.

STATEMENT OF THE ISSUE

Should the Giant Black Male Schnauzer named Cody be declared a dangerous dog, as provided in Minn. Stat. § 347.50, subd. 2?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Cody is a male Schnauzer owned by Michael F. Wurst, a resident of the City. Mr. Wurst lives in a development that has 166 townhomes. The grounds of the development include a pond, tennis courts and a swimming pool.¹

2. Mr. Wurst acquired Cody from his ex-wife. She had too many dogs to care for, and Mr. Wurst was willing to provide a home for Cody. At some point when Mr. Wurst's ex-wife owned Cody, Cody bit someone.²

3. On December 23, 2009, Cody bit a person on the arm and in the buttocks. The victim's arm had two gashes from the attack, which required ten stitches. The victim's buttocks had five puncture wounds as a result of Cody biting her.³

¹ Ex. 10.

² Testimony of Michael F. Wurst.

³ Ex. 7.

4. Following the attack, the City Animal Control Officer, Richard Ruzicka, investigated and determined that the attack was unprovoked and that Cody was a “potentially dangerous dog” within the meaning of Minn. Stat. § 347.50, subd. 3. On January 25, 2010, the City, through its Community Development Director, declared Cody to be a potentially dangerous dog. It informed Mr. Wurst of the designation.⁴

5. The designation of Cody as a potentially dangerous dog meant that he had to have a microchip implanted for identification purposes, and the microchip information had to be provided to the City. The City informed Mr. Wurst of the requirement and of his right to appeal the designation in the January 25th letter.⁵

6. Mr. Wurst wrote a letter to the City about the designation, but he did not request a hearing.⁶

7. Mr. Wurst walks Cody twice a day on the grounds of the townhouse development.⁷ On July 13, 2010, at approximately 7:30 a.m., Julia Sandberg, another resident of the development was walking to work at the pool, which is on the northeast side of the pond. As Mr. Wurst and Cody were rounding the pond, Ms. Sandberg overtook them on the walking path. As Ms. Sandberg passed, Mr. Wurst and Cody were both startled, and Cody bit Ms. Sandberg’s right arm. The bite left three puncture wounds in her arm, and another puncture in her handbag.⁸

8. After the attack, Mr. Wurst asked Ms. Sandberg whether she was all right, to which she replied “no.” He then told her that she should have announced herself before passing so as not to startle Mr. Wurst or Cody.⁹

9. Officer Ruzicka investigated the incident and discovered that Cody was the dog who had bitten Ms. Sandberg. He interviewed Mr. Wurst and discussed the dangerous dog designation. Upon completing his investigation, Officer Ruzicka requested the City to declare Cody a dangerous dog.¹⁰

10. By a letter dated July 26, 2010, the City issued a Dangerous Dog Declaration based on Cody’s having two unprovoked incidents of injuring a human. The Declaration was also based on Cody’s having previously been designated a potentially dangerous dog and having subsequently injured a human. The letter notified Mr. Wurst of his right to appeal the Declaration. On July 31, 2010, Metro Legal Services personally served the Declaration on Mr. Wurst.¹¹

11. By a letter dated August 2, 2010, Mr. Wurst appealed the Declaration. In his appeal, and at the later evidentiary hearing, he asserted that the July 13th incident

⁴ Ex. 7; Test. of Richard Ruzicka.

⁵ Ex. 7.

⁶ Ex. 8; Test. of M. Wurst.

⁷ Test. of M. Wurst.

⁸ Test. of Julia Sandberg; Test. of R. Ruzicka; Test. of M. Wurst; Ex. 1.

⁹ Test. of Julia Sandberg; Test. of M. Wurst.

¹⁰ Test. of R. Ruzicka; Ex. 1.

¹¹ Ex. 3.

was provoked. Mr. Wurst argued that Ms. Sandberg's sudden passing on the path provoked Cody to attack.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The City and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.

2. The City gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. A City may designate a dog as dangerous if the dog injures a human without provocation; it kills a domestic animal without provocation; or it has been found to be potentially dangerous and, after the owner has been notified of the designation, the dog aggressively bites, attacks or endangers the safety of humans or other domestic animals.¹²

4. The City has shown, by a preponderance of the evidence that Cody is a dangerous dog.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

The Administrative Law Judge hereby Orders that: the City's Declaration of Cody as a Dangerous Dog be AFFIRMED.

Dated: August 17, 2010

s/Linda F. Close

LINDA F. CLOSE
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

Pursuant to Minn. Stat. § 347.541, subd. 4, this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

¹² Minn. Stat. § 347.50, subd. 2.

MEMORANDUM

Minnesota Statutes define a “dangerous dog” as any dog that has:

- (1) without provocation, inflicted substantial bodily harm on a human being on public or private property;
- (2) killed a domestic animal without provocation while off the owner's property; or
- (3) been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.¹³

A city thus has three, separate bases for declaring a dog as dangerous. A declaration may be made after a single incident in which a dog injures a person or another domestic animal, or after a second incident following a potentially dangerous dog designation.

Mr. Wurst's sole defense in this appeal is that Cody's July 2010 attack was provoked, thereby negating the reason to declare Cody dangerous. This argument fails for two reasons. First, provocation is not a defense once a dog has been declared potentially dangerous and again attacks. Second, even if provocation were a defense, the attack in July 2010 was not provoked.

In January 2010, the City designated Cody as potentially dangerous after Cody inflicted serious injuries on a human. Mr. Wurst did not appeal the designation. In July 2010, Cody again attacked a human. By then, Mr. Wurst knew Cody had been declared potentially dangerous, and that he had not appealed that declaration. The attack on Ms. Sandberg was aggressive: It left puncture marks on her forearm which, even after a month, are clearly visible. The second attack gave the City solid grounds to declare Cody dangerous solely because of his status as a potentially dangerous dog that attacked again.

Under the facts in this case, provocation is thus irrelevant. Even if it were a defense available to Mr. Wurst, however, he could not meet his burden of showing provocation. "Provocation" is defined as “an act that an adult could reasonably expect may cause a dog to attack or bite.”¹⁴ Mr. Wurst argues that a reasonable person should expect a dog to attack or bite if a person passes the animal on a walking path without first announcing him or herself. He submits that a person or a dog may be startled by the passing of an unexpected pedestrian. He had looked around minutes before the attack and had seen no one coming. He himself was startled when Ms. Sandberg overtook him and Cody on the path.

¹³ Minn. Stat. § 347.50, subd. 2.

¹⁴ Minn. Stat. § 347.50, subd. 8.

While it may be true that a person or animal might be surprised when this happens, it does not follow that a dog's aggressive biting or attack should reasonably be expected as a result of that surprise. On the contrary, given Cody's propensities, Mr. Wurst was the one who needed to be especially vigilant, and he was not in this case.

For these reasons, the ALJ affirms the City's Dangerous Dog Declaration.

L. F. C.